

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DONNY T. HATCHETT,

Plaintiff,

v.

No. 13-cv-1183 MCA/SMV

**UNITED PARCEL SERVICE, INC.,
and MICHAEL VANCE GILLAM,**

Defendants.

ORDER

THIS MATTER is before the Court on Defendants’ Motion for Leave to Amend Exhibits A Through E Attached to Defendants’ Reply . . . [Doc. 30] (“Motion to Amend”) and Plaintiff’s Motion Pursuant to Fed. R. Civ. Proc. [sic] 12(f) to Strike Exhibits A through E . . . [Doc. 31] (“Motion to Strike”). No response has been filed to either motion, and none is needed. The Court, having reviewed the motions and the relevant law and being otherwise fully advised in the premises, shall DENY both motions.

The parties have fully briefed a motion to compel Plaintiff’s independent medical examination under Rule 35. [Docs. 19, 23, 25]. The Court will hear oral argument on that motion on June 12, 2014. [Doc. 20]. The two instant motions presently before the Court relate to Defendants’ reply [Doc. 25] to the motion for a Rule 35 examination.

Defendants’ Motion to Amend seeks to amend the exhibits attached to their reply brief to be in full compliance with D.N.M.LR-Civ 10.5 and 10.6. [Doc. 30] at 2. Defendants’ exhibits exceed the Court’s page limits by four pages and are not properly bracketed or highlighted. *Id.* The Court finds that this failure to strictly comply with the local rules is mostly harmless. Judicial efficiency prompts the Court to excuse strict compliance in this instance. Counsel are

advised that strict compliance shall be expected henceforth. Because the Court excuses Defendants' failure to strictly comply with D.N.M.LR-Civ 10.5 and 10.6, the Court shall deny the Motion to Amend as moot.

Plaintiff's Motion to Strike asks the Court to "strike the affidavits and argument based on the exhibits [presented] for the first time in Reply brief." [Doc. 31] at 5. The Court shall deny the Motion to Strike because it requests relief not available under Rule 12(f). Under that rule, "[t]he court may strike from a *pleading* an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f) (emphasis added). Rule 12(f) only allows courts to strike matters from pleadings, and a reply to a motion for a Rule 35 examination is not a pleading. *See* Fed. R. Civ. P. 7(a) (defining pleadings); *see also* *Searcy v. Soc. Sec. Admin.*, 956 F.2d 278, 1992 WL 43490, at *2 (10th Cir. 1992) (unpublished table opinion) ("[T]here is no provision in the Federal Rules of Civil Procedure for motions to strike motions and memoranda[.]"). Therefore, the Court shall deny Plaintiff's Motion to Strike.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendants' Motion for Leave to Amend Exhibits A Through E Attached to Defendants' Reply . . . [Doc. 30] is **DENIED as moot**.

IT IS FURTHER ORDERED that Plaintiff's Motion Pursuant to Fed. R. Civ. Proc. [sic] 12(f) to Strike Exhibits A through E . . . [Doc. 31] is **DENIED**.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge